IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5354 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE H.K.RATHOD

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

STATE OF GUJARAT

Versus

SHAILESHBHAI VISHNUPRASAD DAVE

Appearance:

1. Special Civil Application No. 5354 of 2001

MR HD DAVE ASST GOVERNMENT PLEADER for Petitioner No. 1

MR HASIT H JOSHI for Respondent No. 1

CORAM : MR.JUSTICE H.K.RATHOD

Date of decision: 21/02/2002

ORAL JUDGEMENT

#. Heard Mr.H.D.Dave, learned AGP appearing for State of Gujarat and Mr.Hasit H. Joshi, learned advocate appearing on behalf of the respondent workman.

#. In the present petition, the petitioner - State of Gujarat has challenged the award passed by the Labour Court, Jamnagar in Reference No.83 / 1995 dated 14th December, 2000, whereby the Labour Court has granted reinstatement with 30 % backwages of interim period to the respondent workman. Initially, this Court has issued RULE returnable on 28th August, 2001 and also granted ad-interim relief in terms of para-14[B]. It is submitted by Mr.H. H. Joshi, learned advocate for respondent that on account of the ad-interim relief order, till date the respondent workman has not been reinstated in service nor paid any backwages as awarded by the labour Court.

#. Learned AGP Mr.H.D.Dave appearing on behalf of the petitioner - State of Gujarat has raised contention that alleged termination has taken place in the year 1985 and the industrial dispute has been raised in the year 1995 and therefore, there was delay of more than 10 years and therefore, such belated Reference ought not to have been entertained by the Labour Court and same would have been rejected by the Labour Court only on the ground of delay. Mr.Dave, learned AGP has also submitted that the Labour Court has committed gross error in granting 30 % back wages to the respondent workman for total period including delayed period and therefore, the Labour Court has committed gross error in granting reinstatement as well as 30 % backwages to the respondent workman. It is also submitted that the respondent workman was merely working as Dailywager and therefore, he was not in continues service for 240 days and hence, he is not entitled to benefits under Section 25-F of the Industrial Dispute Act, 1947. Therefore, the contention of the petitioner is that there was no need for the petitioner to comply the provisions of Section 25-F of the Industrial Disputes Act, 1947 and hence, the entire award is erroneous and the same is required to be quashed and set aside by this Court.

#. Learned advocate Mr.H.H.Joshi appearing on behalf of the respondent workman has submitted that merely raising the dispute after delay, the Labour Court cannot reject the dispute only on the ground of limitation, on the contrary, it is duty of the labour court to decide such dispute on merits but it may have some effect at the time of granting final relief to the respondent workman. Because the delayed dispute, the dispute can not cease but still remains existing and therefore, same is required to be adjudicated by the Labour Court. Mr.Joshi, learned advocate has also submitted that looking to the record produced by the petitioner, finding

given by the Labour Court to the effect that the respondent workman has completed 240 days continues service and undisputedly, provisions of Section 25-F has not been complied with and therefore, the order of termination has been rightly quashed and set aside by the labour court and no error has been committed by the labour court which requires any interference by this Court. However, he fairly submitted that if this Court considers that 30 % backwages of the total period including delay period is unwarranted in the facts and circumstances of the case, in such eventuality, the respondent workman is ready and prepare to forego the claim of 30 % backwages for interim period.

#. I have considered submissions of the learned advocates for the parties. So far the contention raised by the learned AGP Mr.Dave that the industrial dispute was raised by the respondent workman after period of about 10 years and therefore, the Labour Court should have rejected the Reference only on the ground of delay and ought not have adjudicated the industrial dispute on merits, this issue has been discussed by the Apex Court in case of MAHAVIRSINGH V. U.P. STATE ELECTRICITY BOARD reported in 1999 [2] LLR pg.7, wherein the Apex Court has observed that mere delay does not cease the dispute but in fact, it remains in existence and therefore, same is required to be adjudicated by the labour court but no doubt, such delay must have some effect at the time of grant of final relief to the concerned workman. Therefore, this contention raised by the petitioner cannot be accepted. The second contention is that the labour court has committed error in granting reinstatement. However, perusal of award passed by the Labour Court reveals that the Labour Court on appreciation of evidence has found from the record produced by the petitioner that 240 days continuous service was completed by the respondent workman. It is also undisputed between the parties before the labour court court that provisions of Section 25-F were not complied with by the petitioner and therefore, the Labour Court has granted reinstatement, which is just and proper and the award of reinstatement passed by the Labour Court is in accordance with law and as such, no error has been committed by the labour court. However, grant of 30 % backwages of total period including the delayed period, prima facie, seems to be unwarranted and therefore, learned advocate Mr.Joshi appearing for respondent workman has fairly submitted that the respondent workman will not claim 30 % backwages and said part of the direction in the award can be set aside by this Court.

#. It is also pertinent to note one more contention raised by learned AGP Mr.Dave for petitioner that once the Reference has been raised after about 10 years, therefore, the respondent workman whose services, according to him, came to be terminated either in 1985 or 1986 and when the respondent workman has merely completed 240 days service in a year, therefore, the respondent workman may not be granted continuity of service of such delayed period, so that the respondent workman will not claim such benefit in future for said delayed period from the petitioner. This contention raised by learned AGP Mr.Dave for petitioner seems to be well founded that for delayed period, the respondent workman is not entitled to any benefit or backwages or continuity of service. Therefore, in view of this Court, obviously benefits of continuity of service cannot be granted to the respondent workman.

#. In view of above discussion, present petition deserves to be partly allowed and same is partly allowed accordingly. The award passed by the Labour Court, Jamnagar in Reference No.83/95 dated 14th December, 2000 wherein, direction granting 30 % backwages for the interim period in favour of the respondent workman is hereby quashed and set aside. It is further declared that the respondent workman is not entitled to benefit of continuity in service. However, the order of granting reinstatement to the respondent workman is unaltered and the same is not disturbed by this Court.

#. At this stage, Mr.Joshi, learned advocate for respondent workman has submitted that on account of the interim order passed by this Court, till date, the respondent workman has not been reinstated in service. Therefore, his request before this Court is that since this Court has not disturbed reinstatement as awarded by the Labour Court and therefore, some suitable directions may be given by this Court to the petitioner so that the respondent workman may be reinstated in service within some reasonable time. Request being reasonable, same is accepted. Considering the submission of the learned advocate Mr.Joshi, it is directed to the petitioner to reinstate the respondent workman as per the award of the Labour Court as directed above within period of two months from the date of receipt of this order. It is also further directed to the petitioner to pay full wages to the respondent workman from the date of award i.e. 14th December, 2000 till the date of actual reinstatement within period of three months from the date of receiving the copy of this order.

Rule is made absolute to the extent indicated hereinabove. No order as to costs. Direct service is permitted to the respondent workman.

Date : 21-2-2002 [H.K.Rathod, J.]

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